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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968.

No. 682

FRANK DITTO,

Petitioner,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION; ORLANDO W. WILSON, SUPERINTENDENT OF POLICE OF THE CITY OF CHICAGO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

RICHARD F. WATT,
IRVING M. KING,
ROBERT H. NICHOLS,
105 West Adams Street,
Chicago, Illinois 60603.

STANLEY A. BASS,
Civil Legal Aid Service,
Cook County Jail,
Chicago, Illinois,
Attorneys for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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CITY OF CHICAGO, A MUNICIPAL CORPORATION;
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OF POLICE OF THE CITY OF CHICAGO,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Frank Ditto, prays that a Writ of Certiorari issue to The Appellate Court of Illinois, First District, to review a judgment entered on August 31, 1967. Rehearing was denied but the opinion was modified on September 28, 1967. Petitioner timely sought leave to appeal to the Supreme Court of Illinois, but that Court denied leave on September 23, 1968.

CITATIONS TO OPINIONS BELOW.

The Supreme Court of Illinois did not issue an opinion in denying leave to appeal from the judgment of the Appellate Court of Illinois. See Appendix B, *infra,* p. A-18. The opinion of the Appellate Court of Illinois, First District, is reported at 86 Ill. App. 2d 340, and is printed as Appendix A hereto, *infra,* pp. A-1 to A-17 inclusive.

JURISDICTION.

The order of the Supreme Court of Illinois denying Petitioner leave to appeal was entered on September 23, 1968. The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(3), Petitioner having asserted below, and now contending here, that he was deprived of rights secured by the Constitution of the United States .

QUESTIONS PRESENTED.

1. Whether Petitioner was entitled to a jury trial on the charge of criminal contempt?

2. Whether under *Bloom* v. *Illinois,* 391 U. S. 194 (1968), and *Dyke* v. *Taylor Implement Mfg. Co.,* 391 U. S. 216 (1968), the issue of the right to a jury trial in a case such as this remains unresolved since there has been no precise determination of what constitutes a serious contempt?

3. Whether *Walker* v. *Birmingham,* 388 U. S. 307 (1967), rehearing denied, 389 U. S. 894, holding that an individual may be held in contempt for failure to obey an *ex parte* injunction, even if that injunction is unconstitutionally vague and is invalid as a prior restraint on preferred freedoms in contravention of the First and Fourteenth Amendments, correctly states the law?

4. Whether the *ex parte* injunction issued in this case

restraining peaceful civil rights demonstrations violates the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

This case involves the following provisions of the Constitution of the United States:

> The First Amendment:
>
> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section 1 of the Fourteenth Amendment, which reads in pertinent part as follows:

> . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Sixth Amendment, which reads in pertinent part as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law . . .

STATEMENT.

This suit was commenced by the City of Chicago and its Superintendent of Police by a complaint for injunctive relief filed on August 19, 1966 (R. 12-30).* On that day, on motion of Plaintiffs but without formal notice (R. 3-4, 7-9), a temporary injunction was issued by Judge Cornelius J. Harrington of the Circuit Court of Cook County (R. 34). The order restrained the defendants,[1] including Petitioner Frank Ditto, and others acting with them or on their behalf, from organizing or conducting or participating in "any march, assembly, gathering or meeting on public property" in the City of Chicago except in conformity with the express conditions contained in the injunction order (R. 38-39). Specifically, those conditions were as follows (R. 39):

> (A) From organizing, conducting or participating in any march, assembly, gathering or meeting on public property in more than one specific area of, or location in the City of Chicago on any given date.
>
> (B) From conducting . . . any such march . . . unless such march . . . is limited to such numbers as will not obstruct traffic, either vehicular or pedestrian, in an unreasonable manner, and, in any event, . . . be limited in size to 500 persons or less.
>
> (C) From conducting . . . any such march . . .

---

* References are to the Excerpts from the Record filed with the Appellate Court and the Illinois Supreme Court, as authorized by Rule 342 of the Illinois Supreme Court Rules. These Excerpts are part of the record filed in this Court.

1. The defendants named, in addition to Frank Ditto, were Rev. Dr. Martin Luther King, Jr., Rev. James Bevel, Rev. Jesse Jackson, Rev. Andrew J. Young, Albert Raby, Elbert Ransom, and Rev. William Alvin Pitcher. The defendants were named individually and as members of The Southern Christian Leadership Conference, the Co-Ordinating Council of Community Organizations, and Oakland Committee for Community Improvement.

unless the Police Department of the City of Chicago has been given notice in writing of the location, number of people participating, and the names of organizers of any such march . . ., its route, and time of inception, at least twenty-four (24) hours prior to its inception.

(D) From conducting . . . any such march . . . except during daylight hours and at times other than peak traffic periods (7:30 a.m. to 9:00 a.m. and 4:30 p.m. to 6:00 p.m.).

The injunction was issued on the basis of representations by Plaintiffs that an emergency existed by reason of the fact that large numbers of "civil rights marches" and "civil rights demonstrations" were taking place in the City of Chicago, in many cases without advance notice to the police. It was further represented that these marches were creating intolerable demands upon the police force. It was alleged, among other things, that the reassignment of police officers in order to protect participants in such demonstrations from the hostile reactions of spectators was resulting in substantial increases in crimes against persons and property in other areas of the city (R. 12-30).

Shortly after the injunction issued, Petitioner held a press conference and announced his intention to violate the injunction. That press conference took place at approximately 10:00 A.M. on August 22, 1966 (R. 154-55). Petitioner distributed written copies of his statement to those present, and at least one member of the Chicago police force received a copy (R. 164-65). Petitioner even told that officer where he intended to march (R. 177-78).

Petitioner's statement may be characterized as a sincere and even eloquent declaration of the reasons why he believed it was his right and duty to challenge the legality of the injunction. He stated that "it is the duty of citizens to protest unjust laws and bring them to the attention of a jury of their peers for re-examination in the light of a

progressively enlightened society" (R. 166-67). Asserting that he was not a criminal and that he tries "to live [his] life by laws greater than those which are strictly local—commandments which begin with 'Love thy neighbor as thyself'," Petitioner announced his "conscious intent to defy the court injunction issued by Judge Harrington . . ." (R. 167). In particular, he asserted that he intended to challenge the legality of a court order which prevented him from peacefully demonstrating "after nightfall." He stated that he knew of no law "which defines the limit of liberty by segregating the hours of the day, between the light and dark" (R. 168). Elaborating on these views, he said (R. 165-74):

> I am a citizen twenty-four hours a day. If I work at night, I am required to pay taxes equally upon the wages I earn during hours of darkness. If I am drafted into the Army, I am required to defend my country equally at night as in the day. The traffic lights require my attention as much at midnight as at noon, and there is no reason why all laws should not be equally administered during the nighttime as in daylight.
>
> This order, denying me my constitutional right to demonstrate, discriminates not against demonstrators in general but against particular demonstrators; and not against demonstrations, but specifically against Negroes. . . . It is a short step from banning peaceful demonstrations to banning distribution of literature, from banning the Constitutional right of assembly to suspending the Constitutional right of free press . . . One can easily project the terrible possibilities of the loss of our sacred liberties guaranteed under the Constitution were it not for the individual acts of some citizens prepared to face imprisonment to call public attention to the danger for which all someday must suffer. If an injunction was called for by this outbreak of violence, so un-American and detestably inhuman—which resulted from the non-violent demonstrations of

> the past month—then it was incumbent upon the Court to enjoin the citizenry at large against attacks upon the peaceful demonstrators.

As he said he would, Petitioner conducted a march that day, in which twenty-seven individuals, including nine children, participated. It lasted slightly more than an hour and was characterized by a total absence of noise, singing, chanting, shouting, clapping, dancing, loitering, littering, obstructing, or violence. There is nothing in the record even suggesting that the marchers were disorderly, disruptive, or provocative in any manner (R. 176-82).

On the next day, Judge Harrington, acting on the Plaintiffs' motion, entered an order directed to the Petitioner, commanding him to appear before the court to show cause why he should not be held in contempt (R. 50-51). At the trial the evidence suggested only that Petitioner was in violation of sub-section (C) of the injunction order, since he had not given the police written notice 24 hours in advance of his march (R. 184-88). Petitioner did not offer evidence in his defense, taking the position that he could not be held in contempt for violation of an unconstitutional injunction (R. 275, 327-28, 71-73). Petitioner's request for a jury trial was denied (R. 110-11).

Petitioner was found guilty of violating the injunction (R. 330). The Court announced that Petitioner's conduct "can cause great and irreparable injury to the plaintiff in this cause" (R. 330), and sentenced him to six months in the Cook County Jail (R. 331). Although requested to do so, the trial court declined to set an appeal bond, stating that Petitioner would have to have bond set by the Appellate Court (R. 331). In the written order which followed, the Court found that the acts of Petitioner "*did* cause great and irreparable injury to the plaintiff" (R. 85).

Petitioner served three months of his sentence before

being released on bond by the Appellate Court. He has not served the balance of his sentence, and the mandate of the Appellate Court has been stayed pending the disposition of this Petition.

MANNER OF RAISING THE CONSTITUTIONAL ISSUES BELOW.

Petitioner raised the Constitutional issues by appropriate and timely motions in the trial court. His attorneys moved for a jury trial; the motion was denied (R. 110-11). Petitioner also filed motions to strike and dismiss and for an order to vacate and set aside the injunction order; Petitioner asserted that the court lacked jurisdiction to enter the injunction order and that the activities which he had engaged in, purportedly in violation of the injunction, were protected by the First Amendment to the United States Constitution (R. 65-73). The court denied these motions.

These Constitutional issues were urged upon appeal to the Appellate Court; as that Court's opinion indicates, they were considered and rejected. (Appendix A, pp. A-9 to A-14 inclusive; pp. A-15 and A-16).

REASONS FOR GRANTING THE WRIT.

I.

PETITIONER'S TIMELY REQUEST FOR A TRIAL BY JURY ON THE CHARGE OF CRIMINAL CONTEMPT RAISES SERIOUS CONSTITUTIONAL QUESTIONS WHICH HAVE NOT BEEN SETTLED BY RECENT DECISIONS OF THIS COURT. THEY SHOULD NOW BE CONSIDERED AND RESOLVED.

This Court has had occasion recently to reexamine the law with respect to the right to a trial by jury in criminal contempt cases. *Bloom* v. *Illinois,* 391 U. S. 194 (1968), and *Dyke* v. *Taylor Implement Mfg. Co.,* 391 U. S. 216 (1968). These decisions, while significantly clarifying the law, leave a substantial area of uncertainty, since they do not, in any realistic and workable manner, articulate the distinction between petty and serious contempts.

The dilemma thus created confronts both the defendant and the judge before whom the cause is tried. A criminal contempt defendant in Illinois, where there exists no statutory limit to the sentence,[2] has no inkling at the outset of the trial as to the severity of punishment which might be imposed should he be found guilty. In a very real sense, he must move for a jury trial in total absence of any certainty as to his rights as they pertain to the charge on which he is to be tried. Presumably, the granting or denying of the motion will give him some insight into the judge's view of the cause. But the more difficult and, it is submitted, the more insoluble dilemma is that of the trial judge himself. For, in order to rule on defendant's

2. Cf. *Bloom* v. *Illinois,* 391 U. S. 194, 20 L. ed. 2d 522, 534 (1968).

motion for a jury trial, the judge is required, *at the outset of the cause,* to reach some conclusions as to the merits. The motion for a jury trial compels the judge to decide, without having heard any evidence, how seriously he views the offense. If he regards it as serious, he must grant the motion, and in so deciding he in effect predetermines the kind of sentence he will impose if the defendant is found guilty. This anomalous result is occasioned by this Court's recent decisions which seem to condition the right to a jury trial on the length of the sentence.

Petitioner in this cause was sentenced to six months in the Cook County Jail.[3] In *Cheff* v. *Schnackenberg,* 384 U. S. 373 (1966), a six month sentence enables the case to be viewed subsequently as a "petty offense, which . . . does not require a jury trial." 384 U. S. 373, 379-80. It might be argued that this disposes of the contentions raised by Petitioner. But the matter is not so simple. The opinion of the dissenting Justices in *Dyke* v. *Taylor Implement Mfg. Co.,* 391 U. S. 216, 20 L. ed. 2d 538, 544-45 (1968), makes it

3. Conditions in the Cook County Jail have long been known to be deplorable. A persuasive argument could be made that six months in that infamous institution are easily the equivalent of two or three times as long almost anywhere else. Thus to adopt as the dividing line between serious and petty contempts a given length of sentence—such as six months—is to ignore the conditions of incarceration which may be so bad as to border on cruel and unusual punishment.

There is only one way to describe a six months sentence in the Cook County Jail for the "crime" of conducting a peaceful hour-long march: it is savage and barbarous. Cf. "The Cook County Jail," Report of the December 1967 Cook County Grand Jury; "Interim Report of the John Howard Association," an undated document, and "Report of the John Howard Association", dated July 15, 1968; Chicago Sun Times, December 5, 6, 13, 14, and 15, 1967, and January 15, 1968 (series of articles on conditions in the Cook County Jail).

Had Petitioner been tried for violating the provisions of the Chicago Municipal Code requiring a permit for a march or parade, *he could not have been imprisoned,* since the maximum penalty is a $200.00 fine. Chicago Municipal Code, Secs. 36-31, 36-35.1. *And he would have been entitled to a jury trial.*

clear that a determination, after the event, as to the nature of a cause based upon the severity of the sentence imposed is an exceedingly subjective business. Mr. Justice Harlan's dissent in *Duncan* v. *Louisiana,* 391 U. S. 145, 20 L. ed. 491, 519-20 (1968), dramatically emphasizes this point.

Rights guaranteed to individuals under the United States Constitution, such as the right to a jury trial, simply ought not depend on anything so ephemeral as the subjective appraisal by this Court of the gravity of a given punishment at a given time.

The "petty" vs. "serious" distinction is unworkable. There is no way of defining what is "serious" as opposed to "petty". And, even if the distinction rests on the length of the sentence, that cannot be known until, after conviction, the judge imposes a jail term. Until that time one can do no more than guess.

Under Sections 5 and 9 of Article II of the Illinois Constitution a defendant is entitled to a jury trial "in all criminal prosecutions." While this guarantee has been held by the Illinois courts not to apply to criminal contempt proceedings, even where a lengthy jail sentence is involved, it does serve to ensure to a defendant a jury trial in such grave offenses as the unauthorized removal of sod from a public way, the advertising of psychic or magical powers, and the keeping and using in a place of public resort of implements for the games of bagatelle or pigeonhole, where the maximum penalties are fines of $50, $100, and $200 respectively. Chicago Municipal Code, Secs. 193-21, 193-25, and 193-26.

To grant the right to a jury trial to defendants charged with such crimes, while denying it to defendants faced with the possibility of long sentences for criminal contempt, is to exalt technicalities into controlling criteria for the application of Constitutional rights.

This Court should sweep away the remnants of old doctrines which denied jury trials in criminal contempts, and it should do so with full recognition that a six months sentence is not a trivial punishment and that the mere possibility of such a sentence entitles the accused to a jury trial.

II.

WALKER v. CITY OF BIRMINGHAM SHOULD BE OVERRULED. AN INJUNCTION VOID AS IN CONTRAVENTION OF CONSTITUTIONAL GUARANTEES SHOULD BE OPEN TO ATTACK IN A TRIAL FOR CONTEMPT.

The Illinois Appellate Court regarded this Court's decision in *Walker* v. *City of Birmingham,* 388 U. S. 307 (1967), rehearing denied, 389 U. S. 894, as controlling. It was and still is Petitioner's view that *Walker* was wrongly decided.

Further, *Walker* is clearly distinguishable from this case by reason of the penalty imposed. The demonstrators convicted in Birmingham, Alabama were fined $50.00 and sentenced to five days imprisonment. Petitioner, convicted in Chicago, was sentenced to *six months* in the County Jail. This is a term *thirty-six times* as long for a transgression, which at worst, was virtually identical to the one committed in Alabama. It is difficult to believe that the *Walker* case would have been decided in the same manner if there a six-month sentence had been imposed.

Contempt convictions for violation of invalid state court injunctions have been reversed when Congress has preempted the field. *United Gas, Coke and Chemical Workers* v. *Wisconsin Employment Relations Board,* 340 U. S. 383 (1951); *In re Green,* 369 U. S. 689 (1962). Certainly the decrees of a court ousted of power by congressional statute should be entitled to no less respect than decrees which a court lacks authority to make because of Constitutional

prohibitions. On balance, if decrees of the former kind can be disregarded without risk of being in contempt, it is impossible to understand why decrees of the latter sort are to be accorded special standing.

The argument that obedience to court orders is necessary to maintain respect for the courts and to preserve the rule of law through orderly judicial procedures has a hollow sound where the order disobeyed itself violates Constitutional rights. *Johnson* v. *Virginia,* 373 U. S. 61 (1963); *N. A. A. C. P.* v. *Alabama,* 357 U. S. 449 (1958). That the order in this case is termed an "injunction" does not endow it with the capacity to defeat Constitutional guarantees. Mere labels should not determine Constitutional issues. *N. A. A. C. P.* v. *Button,* 371 U. S. 415, 429 (1963).

A case inexplicably ignored by this Court in *Walker* is *Thomas* v. *Collins,* 323 U. S. 516 (1945). Thomas was found guilty of violating an *ex parte* injunction restraining him, in accordance with a Texas statute, from soliciting union memberships without first registering as an organizer. Thomas deliberately ignored the injunction "because he regarded the law and the order as a restraint upon free speech and assembly" 323 U. S. 516, 536. This Court, in reversing Thomas' contempt conviction, *made no mention of any duty to obey* a void injunction which abridged First Amendment freedoms.

Moreover, a rule prohibiting a defendant at his contempt trial from attacking the underlying injunction on the ground that it violates First Amendment rights is to sanctify an invalid prior restraint on those rights. The inevitable effect of such a rule is to suspend, most probably for long periods of time, precious rights of free speech and freedom of assembly while the question of the court's right to issue the injunction in the first place is litigated. Suspension of the right to speak freely is destructive of that right.

It is Petitioner's firm belief that a judicial doctrine which permits the result achieved here cannot withstand close scrutiny. The application of *Walker* v. *City of Birmingham* to this case has produced an exceedingly harsh result: a six-month jail sentence for engaging in a wholly peaceful march. It is submitted that the dissenters in *Walker,* 388 U. S. 324 (1967), correctly stated the law, and that this Court should, therefore, grant the Petition for Certiorari and overrule *Walker* v. *City of Birmingham.*

III.

THE GRAVITY OF THESE QUESTIONS IS MAGNIFIED BY THE FACT THAT THE INJUNCTION WHICH PETITIONER WAS CONVICTED OF VIOLATING IS UNCONSTITUTIONAL FOR VAGUENESS AND IS AN INVALID PRIOR RESTRAINT ON CONSTITUTIONALLY PREFERRED FREEDOMS.

The plain and simple reality of this case is that Petitioner was punished because he exercised rights guaranteed by the Constitution. Were it not for the temporary injunction, issued *ex parte* on August 19, 1966, there would be no question but that Petitioner's exercise of the rights of free speech, freedom of assembly, and petition for redress of grievances would have been protected by the First and Fourteenth Amendments. *Thornhill* v. *Alabama,* 310 U. S. 88 (1940); *Gitlow* v. *New York,* 268 U. S. 652 (1925); *Centennial Laundry Company* v. *West Side Organization,* 34 Ill. 2d 257 (1966). It is *only the injunction* which operated to suspend those rights. But an injunction which is a prior restraint on First Amendment rights and which in itself deprives an individual of his rights is void and should command no obedience. *Congress of Racial Equality* v. *Douglas,* 318 F. 2d 95, 102 (5th Cir. 1963), cert. den. 375 U. S. 829; cf. *Bantam Books, Inc.* v. *Sullivan,* 372 U. S. 58, 70 (1963); cf. *Thomas* v. *Collins,* 323 U. S. 516 (1945).

The argument that an overriding public interest in law and order here required the prior restraint of First Amendment freedoms, *because of the violent nature of the response of those opposed to the views being espoused by those enjoined,* fails for the very reason that "a function of free speech . . . is to invite dispute." *Terminiello* v. *Chicago,* 337 U. S. 1 (1949). See also *Milk Wagon Drivers Union* v. *Meadowmoor Dairies,* 312 U. S. 287 (1949).

The injunction entered below is not only invalid as a prior restraint, it also suffers from the vice of vagueness—a particularly invidious failing. *Ashton* v. *Kentucky,* 384 U. S. 195 (1966); *Smith* v. *California,* 361 U. S. 147 (1959).

The phrase "unreasonable demonstration" is, of course, so vague and uncertain that no reasonable individual could know with any certainty what type of demonstration in support of a petition for redress of grievances is permitted. The phrase "march, assembly, gathering or meeting on public property", which appears in paragraphs (A) through (D) of the injunction, is also far too indefinite. What if, following an indoor conference of civil leaders, the participants walked together several blocks to their cars. Would they be engaged in a "march" or "assembly" which, for example, required a 24-hour written notice to the Chicago Police Department? And if not, why not? A criminal statute of equal vagueness would not survive judicial testing. A court order prohibiting certain kinds of conduct should not be immune to the same test.

CONCLUSION.

The *ex parte* injunction issued in this case—curbing the exercise of Constitutional rights—grew out of a situation in which the City of Chicago and its police claimed they could not cope with the disorder and violence of those who opposed the peaceful civil rights demonstrators led

by Martin Luther King. Unable to restrain the lawless, the City decided to crack down on the law-abiding. Private citizens were therefore restrained from exercising their Constitutional rights simply because other private citizens proposed to resort to violence to prevent the exercise of those rights.

Petitioner caused no harm, fomented no violence, threatened no man. Yet he brought down upon his head a six month jail sentence for acting upon his belief that no judge had the power to restrain his peaceful exercise of First Amendment rights.

This Court should determine whether, on trial for criminal contempt, Petitioner had the right to challenge the constitutionality of the order he was charged with violating. In addition, it should determine whether Petitioner was entitled to a jury trial.

For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

RICHARD F. WATT,
IRVING M. KING,
ROBERT H. NICHOLS,
105 West Adams Street,
Chicago, Illinois,

STANLEY A. BASS,
Civil Legal Aid Service,
Cook County Jail,
Chicago, Illinois,
Attorneys for Petitioner.

APPENDIX A.

CITY OF CHICAGO, a Municipal Corporation, ORLANDO W. WILSON, Superintendent of Police of the City of Chicago, *Plaintiffs-Appellees, vs.* REV. DR. MARTIN LUTHER KING, ET AL., *Defendants,* FRANK DITTO, *Defendant-Appellant.*

Gen. No. 51,792.

First District, Fourth Division.
August 31, 1967.

Rehearing denied and opinion modified
September 28, 1967.

Appeal from the Circuit Court of Cook County; the Hon. CORNELIUS J. HARRINGTON, *Judge,* presiding. Affirmed.

MR. PRESIDING JUSTICE ENGLISH delivered the opinion of the court.

On September 6, 1966, defendant Frank Ditto was convicted of criminal contempt and sentenced to six months in the County Jail. He appeals, contending: (a) the temporary injunction order which he was alleged to have violated and upon which his contempt conviction was based, was unconstitutional and therefore void; (b) it was therefore error to refuse to allow collateral attack upon such order at his trial for contempt; (c) he was unconstitutionally denied a trial by jury; and (d) he was not shown to have violated the injunction.

On August 19, 1966, a verified complaint by the City of Chicago and its Superintendent of Police was filed in the Circuit Court seeking an injunction order restraining defendants, as individuals and collectively as various groups of citizens, from conducting, organizing, or participating in unreasonable demonstrations in support of a petition for the redress of alleged grievances; towit:

(A) From organizing, conducting or participating in any march, assembly, gathering or meeting on public property in more than one specific area of, or location in the City of Chicago on any given date.

(B) From conducting (etc.) . . . any such march (etc.) . . . unless such march (etc.) . . . is limited to such numbers as will not obstruct traffic, either vehicular or pedestrian, in an unreasonable manner, and, in any event, . . . be limited in size to 500 persons or less.

(C) From conducting (etc.) . . . any such march (etc.) . . . unless the Police Department of the City of Chicago has been given notice in writing of the location, number of people participating, and the names of the organizers of any such march . . . , its route, and time of inception, at least twenty-four (24) hours prior to its inception.

(D) From conducting (etc.) . . . any such march (etc.) . . . except during daylight hours and at times other than peak traffic periods (7:30 a. m. to 9:00 a.m. and 4:30 p.m. to 6:00 p. m.).

In this and the following six paragraphs we shall outline the allegations of the complaint. Defendants had in recent years adopted a form of concerted action described as "civil rights marches" or "civil rights demonstrations" as a method of petitioning for redress of their alleged

grievances under the Constitutions of the United States and Illinois. During 1965 and 1966, in Chicago, these demonstrations had included a number of marches involving several thousand people, conducted under permit and in an orderly manner. However, during the same period, defendants had organized other marches and demonstrations conducted without permits, and during the course of which there were many civil disturbances resulting in the arrest of 1,372 persons. During June, July and August 1965, defendants organized and participated in almost daily "vigils" in numbers varying from several to several hundred persons before the City Hall and other public buildings. In the latter part of 1965 and through the winter and spring of 1966, many other demonstrations were organized by defendants involving similar numbers of people. Throughout this period, the Chicago police in no way attempted to interfere with the marches and demonstrations, but, on the contrary, affirmatively assisted and protected all those involved who were peaceful and orderly.

In January 1966, defendants and others advised City officials and the news media that they intended to embark upon a program of developing "creative tension" in the City of Chicago throughout the ensuing summer. During June and July 1966, while defendants were making public statements, appearing on news media, issuing news releases, and publicly corresponding with city officials in the course of organizing people in several areas of the city, major civil disturbances erupted. These resulted in damages of more than several millions of dollars to private property, the death of 27 persons, and injury to 374 others, including 61 police officers. In order to contain the disturbances on the west side of Chicago, it became necessary for the Illinois National Guard to assist the police, and in the course of these disturbances, over 536 persons were arrested.

During July and August of 1966, defendants adopted a pattern of demonstrating in individual neighborhoods in Chicago in diverse areas at approximately the same time, each such demonstration consisting of a substantial number of people, usually several hundred. Particularly, on August 14, 1966, three groups of demonstrators went into three separate neighborhoods, Gage Park, Bogan and Jefferson Park, each of which is separated from the others by substantial distance. The times of the demonstrations were either simultaneous or overlapping. While the three demonstrations were occurring, a severe civil disturbance involving several hundred people, and also concerning "civil rights" marches, erupted in the Marquette Park area, adjoining Bogan.

On August 16, defendants organized six groups of demonstrators which proceeded to six separate locations in the downtown area of Chicago and demonstrated during the day. On the same date, six groups of demonstrators organized by defendants, returned to the Jefferson Park neighborhood at dark and proceeded to demonstrate until after midnight.

At each of these "neighborhood demonstrations," large crowds other than the demonstrators, varying in size from several hundred to several thousand people, gathered along the line of march carrying signs, hooting, throwing rocks, firecrackers and other missiles at the marchers, thereby endangering the persons and property of the marchers and other citizens, as well. Several dozen automobiles belonging to the marchers and others were burned or otherwise substantially damaged. Access to the sidewalks was denied to nonparticipating citizens, the normal flow of pedestrian and vehicular traffic was obstructed, substantial damage was done to private property along the routes of march, and 177 persons were arrested. During each of these marches and demonstra-

tions, the Chicago police assisted and protected all those engaged therein who conducted themselves in a peaceful and orderly manner, and in no way did the police attempt to interfere with them.

Despite repeated requests by the police that adequate notice of marches and demonstrations be provided to the Police Department, and despite repeated assurances by defendants that such notice would be given (the latest assurance being August 4, 1966 by defendant Martin L. King), written notification of the locations, character and extent of the demonstrations was received by the police before only two of the more than two hundred such demonstrations. On no other occasion was notice given which was accurate, timely and verifiable. This failure to provide notice caused an extensive and unreasonable waste of police man power which would otherwise have been used for crime prevention and detection in other areas of the city. During the marches and demonstrations from July 16 to August 16, in order to protect the marchers and the persons and property of citizens who were neither participating in the marches nor in the attacks on the marchers, it was necessary for the Police Department to assign 7,124 men to special duty for the specific purpose of protecting the marchers and others in only six neighborhoods within the City of Chicago. These assignments to special duty removed policemen from normal duty posts in other areas and reduced police protection in those areas to such an extent that there resulted a substantial increase in crimes against persons and property directly attributable to such lessened police protection. The effective police patrol force on a normal watch is approximately 1,020 men, exclusive of detectives, traffic and juvenile officers. The burden placed upon the Police Department because of simultaneous marches at widely separated locations in the city is illustrated by the

fact that the three marches on August 14 requires assignment to special duty of 1,279 policemen.

Although defendants were requested to cease and desist from placing this unreasonable burden on the Police Department and on the rights of other citizens to have their persons and property protected by the City, the defendants not only continually refused and threatened to continue the demonstrations in said unwarranted and injurious manner, but also threatened to expand the demonstrations into many other neighborhoods at simultaneous times. The police and city officials were informed that this course of action was imminent, and averred that if defendants were permitted to conduct simultaneous marches, it would be impossible for the police to protect the marchers, demonstrators and public and private property and persons of the more than 3½ million citizens of the city, who were not participating as marchers or as protestors, from the clear and present danger of riot, civil disturbance, and the deleterious effects of unreasonably overburdened police duties. Defendants' actions during the month of August, and particularly on the 14th and 16th, and their announced intention to expand the demonstrations into many neighborhoods at simultaneous times, constituted a clear and present danger to the order, peace and quiet, health, safety, morals and welfare of the City of Chicago. Plaintiffs recognized the right of defendants to conduct reasonable demonstrations in furtherance of their right to call attention to their petition for redress of alleged grievances, but alleged that the pattern of action described in the complaint did not constitute reasonable demonstration in support of such petition, and that the restraints sought were reasonable and not in violation of any rights of defendants guaranteed by the Constitutions of the United States and of Illinois. Then followed the prayer of the complaint which has been set forth above.

On August 19, 1966, an order was issued by the chancellor granting the relief sought in the form of a temporary injunction and incorporating the language in the prayer of the complaint. At the hearing on plaintiffs' motion which resulted in this injunction, defendant Ditto was present in court and made no objection thereto.

Thereafter, plaintiffs filed a Petition for a Rule to Show Cause, which petition recited the entry of the temporary injunction on August 19, and alleged that it had been served on defendant Ditto (hereinafter defendant) at 10:30 a.m. on August 22.

With a supporting affidavit by Police Sergeant Mulvey, the petition alleged that at 10:00 a. m. on August 22, defendant had held a press conference in the presence of news reporters and television cameras, during which he read a prepared statement, a copy of which was obtained by Mulvey at the time and later read into evidence at defendant's trial. In that statement, defendant said: "In the course of the last two years I have been arrested a total of fifteen times," and "[I]n each and every case I have considered it not a punishment but a privilege to participate in the process of constantly amended and improved interpretations of what we, at any given moment, consider to be the law of the land." Defendant then introduced himself as a law-abiding citizen who waits at traffic lights and pays his taxes, but who also tries to "live my life by laws greater than those which are strictly local—commandments which begin with 'Love thy neighbor as thyself.'" Defendant then stated:

> It is with this introduction of myself that *I choose to announce my' consious intent to defy the court injunction* issued by Judge Cornelius Harrington of the Circuit Court of Cook County on Friday, August 19th, 1966. (Emphasis supplied.)

Defendant then went on to say that the order "discriminates not against demonstrators in general but against particular demonstrators; and not against demonstrations, but specifically against Negroes." After some elaboration, defendant quoted from a telegram he sent to President Johnson and the Department of Justice in which he "consciously and willfully" announced his "intention of violating the injunction . . .," explaining "[i]t is my belief that this injunction is an illegal and unwarranted usurpation of my Constitutional rights. . . ." He then requested the "immediate intervention of the Justice Department on my behalf . . .," and claimed that if the Mayor and Superintendent of Police "are unable to control and maintain law and order during the peaceful process of the democratic system, then Martial Law and not unconstitutional court injunction is required."

Based on the affidavit of H. M. Pierson, District Commander of Police, the petition further alleged that on August 22, defendant violated the temporary injunction in that he held a march or demonstration at 7:20 p.m. in a residential area in the City of Chicago with no prior notice to police. (See "(C)" above.) This demonstration consisted of a march along the public sidewalk by defendant, seventeen adults and nine children. Although halted and warned by police that they were in violation of the notice provision of the injunction order, defendant and the others continued to march until they dispersed at approximately 8:10 p.m. There were spectators present and the police addressed the demonstrators with a "blow horn." All these facts were set forth in the petition, and it was further alleged that in the normal course of activity, only eight to ten policemen would have been assigned to this entire area. On the evening of the 22nd, the assignment of police to the small area within a few blocks of the demonstration consisted of all the cars in the surrounding area (but for one wagon), four

sergeants, twenty-two patrolmen from the task force, two, policewomen and two officers from the juvenile division, two Captains and an acting Lieutenant.

On August 23, 1966, acting on plaintiffs' Petition for a Rule to Show Cause, the chancellor entered an order for the issuance of a citation directed to the defendant, commanding him to appear on August 25 "to show cause, . . . why he should not be punished for contempt of the court in violating the injunction order issued by this court on August 19, 1966."

A hearing was held on August 25, with defendant and his retained counsel present, at which both officers testified in support of the averments and affidavits of the petition which was admitted into evidence. The case was continued to August 26, and then, on defendant's motion, to September 6, when defense rested without offering any evidence to refute the plaintiffs' case, relying instead on the defense that the temporary injunction order abridged defendant's constitutional rights and was therefore void. The court refused to consider this question as relevant to the issues of whether it had jurisdiction of the parties and of the subject matter, and of whether defendant was guilty of contempt of court for having violated the order. The court also refused defendant's timely request for a trial by jury.

[1] The first and major question on this appeal is whether it was a denial of defendant's constitutional rights for the trial court to have refused to consider the constitutionality of its temporary injunction at defendant's trial for contempt of court in having violated that order. It was not. *Walker* v. *City of Birmingham,* 388 U. S. 307, 87 S. Ct. 1824 (1967). In that case, city officials filed a complaint alleging that continuance of marches and demonstrations in violation of the local parade ordinance

threatened the safety, peace and tranquility of the City and placed an undue burden and strain upon the man power of the Police Department, and that the remedy at law was inadequate. The court entered a temporary injunction restraining petitioners from marching in violation of the ordinance. Petitioners then held a press conference "declaring their intention to disobey the injunction" (at page 1826), did violate it, and when tried for contempt of the issuing court, attemtped to attack the constitutionality of the injunction. The trial court, noting that petitioners had neither tried to comply with the order nor moved to have it dissolved, refused to consider the collateral questions of constitutionality of the injunction or of the parade ordinance, and "held that the only issues before it were whether it had jurisdiction to issue the temporary injunction, and whether thereafter the petitioners had knowingly violated it." (At page 1827.) In affirming the trial court, the United States Supreme Court adopted the opinion of the Supreme Court of Alabama, saying at page 1828:

> "It is to be remembered that petitioners are charged with violating a temporary injunction. We are not reviewing a denial of a motion to dissolve or discharge a temporary injunction. Petitioners did not file any motion to vacate the temporary injunction until after the . . . parades. Instead, petitioners deliberately defied the order of the court and did engage in and incite others to engage in mass street parades without a permit."
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> * * * * *
>
> "We hold that the circuit court had the duty and authority, in the first instance, to determine the validity of the ordinance, and, until the decision of the circuit court is reversed for error by orderly review, either by the circuit court or a higher court, the orders of the circuit court based on its decision are to be respected and disobedience of them is contempt of

its lawful authority, to be punished. *Howat* v. *State of Kansas,* 258 U. S. 131." 279 Ala. 53, 60, 62-63, 181 So. 2d 493, 500, 502.

The court, (at page 1829) rejected the contention of petitioners there (as we do here) that this rule is constitutionally impermissible, and that the constitution compels a state court to allow violation of an injunction "without any previous effort . . . to have the injunction dissolved or modified, or any attempt to [comply] with its terms."

In re Green, 369 U. S. 689, cited by defendant, was distinguished in the *Walker* opinion (at page 1829) as a case wherein the state court which issued the labor injunction, upon which contempt was grounded, was without jurisdiction over the subject matter because of the federal preemption doctrine.[1] On the issue of jurisdiction in *Walker,* the Court held, as do we in the instant case, that "[w]ithout question the state court that issued the injunction had, as a court of equity, jurisdiction over the petitioners and over the subject matter of the controversy." (At page 1829.) The reason for state court jurisdiction of this subject matter was ascribed to "the strong interest of state

1. The Court further noted that the petitioners in Green, unlike those in *Walker* (and here), had attempted to challenge the validity of the injunction prior to violating it by asking that it be vacated, and also that the petitioners in *Green* had offered to prove that the issuing court had agreed to violation of the order as an appropriate means of testing its validity.

The distinction made on the ground of lack of jurisdiction due to federal preemption also applies to *Bus Employees* v. *Wisconsin Board,* 340 U. S. 383. Another case cited by defendant *National Ass'n for Advancement of Colored People* v. *Alabama,* 357 U. S. 449, involved civil contempt for failure to produce membership lists and is distinguishable from criminal contempt for an affront to the judicial process in the instant case. It should also be noted that the Supreme Court in *National Ass'n for Advancement of Colored People* v. *Alabama,* at pp. 466-467, specifically refused to consider the attack made on an ex parte temporary order restraining further solicitation of support in the state as not being properly before that court since it had not yet been judicially considered in the state courts.

and local governments in regulating the use of their streets and other public places." Distinguishing between the freedom to "communicate ideas by pure speech," as opposed to the communication of ideas by "conduct such as patrolling, marching, and picketing on streets and highways," (citing *Cox* v. *Louisiana,* 379 U. S. 536, 555), the court quoted from its unanimous decision in *Cox* v. *New Hampshire,* 321 U. S. 569, 574:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend." (87 S. Ct. at 1829-1830.)

The court noted that both the injunction order and the Birmingham parade ordinance upon which it was based would unquestionably raise constitutional questions, but emphasized that orderly judicial review is the method by which those questions must be raised, again quoting with approval from a decision of the Alabama Supreme Court:

> "As a general rule, and unconstitutional statute is an absolute nullity and may not form the basis of any legal right or legal proceedings, yet until its unconstitutionality has been judicially declared in appropriate proceedings, no person charged with its observance under an order or decree may disregard or violate the order or the decree with immunity from a charge of contempt of court; and he may not raise the question of its constitutionality in collateral proceedings on appeal from a judgment of conviction for contempt of the order or decree." 273 Ala., at 590, 143 So. 2d at 180. (87 S. Ct. at 1832.)

In the instant case, the temporaray injunction was not cast in terms of a statute or ordinance. It was based, rather, upon a prayer for the exercise of the court's general equity powers, and was issued to meet an emergency situation. In the nature of such proceedings, a hearing would be held later to decide whether the injunction should be made permanent. This introduces an element lacking in the *Walker* case but one which does not alter the result, and could, for that matter, produce the same result on its own, supported by a somewhat different but related line of cases. On appeal of a conviction for contempt for violation of a temporary restraining order, the Supreme Court held in *United States* v. *Mine Workers,* 330 U. S. 258, 293:

> In the case before us, the District Court had the power to preserve existing conditions while it was determining its authority to grant injunctive relief. The defendants, in making their own private determination of the law, acted at their peril. Their disobedience is punishable as criminal contempt.[2]

[2-4] In Illinois, as elsewhere, contempt will not lie for violation of a void decree (*DuPage* v. *Molitor,* 26 Ill. App. 2d 232, 237-238, 167 N. E. 2d 592), but voidness is established when the issuing court is found to have lacked jurisdiction to enter such an order. *In re Green,* 369 U. S. 689. The Illinois decisions have been in accord with the federal cases in holding that if the issuing court has the necessary jurisdiction, its order, no matter how erroneous, must be obeyed, until set aside, under pain of contempt. *Cummings-Landau Co.* v. *Koplin,* 386 Ill. 368, 54 N. E. 2d 462; *Faris* v. *Faris,* 35 Ill. 2d 305, 309, 220 N. E. 2d 210; *Stern* v. *Stern,* 40 Ill. App. 2d 374, 380-381, 188 N. E. 2d 97. The test of jurisdiction is said to be whether the court has

2. The Court, in *Mine Workers* (at pp. 293-294), declared itself in accord with *Howat* v. *Kansas,* 258 U. S. 181, as did the court in *Walker,* where *Mine Workers* was cited as authority, but was not discussed.

power to enter into the inquiry before it, and this is determined by (1) jurisdiction of the parties, (2) jurisdiction of the subject matter, and (3) power in the court to decide the particular matters presented. All such factors being present, the correctness of the court's determination has no bearing upon the initial question of jurisdiction. 12 ALR 2d 1059, 1066.

Against this proposition, it may be argued that unconstitutional court orders, like unconstitutional statutes, are void ab initio, and that, therefore, no court can acquire jurisdiction to issue an unconstitutional decree. However, this argument ignores the situation presented here, where the court issued a temporary injunction in an emergency situation pending its later decison, or that of a higher court, as to whether it had the authority to grant the permanent injunctive relief prayed for. An individual may not take it upon himself to deprive the court of this opportunity. To do so is to invite conviction for contempt of the court irrespective of whatever decision the court might subseqeuntly reach on the merits of the complaint before it. And, as we have seen, the issue as to whether or not contempt had been committed was the only question properly before the trial court in this case. Again quoting from the *Walker* opinion:

> The rule of law . . . followed in this case reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion. This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom. 87 S. Ct. at 1832.

[5] Defendant's second argument is also unavailing. There is no constitutional right to trial by jury for one accused for criminal contempt:

> This claim has been made and rejected here again and again. Only six years ago we held a full review of the issue in *Green* v. *United States* (356 U. S. 165, 183). We held there that "[t]he statments of this Court in a long and unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of court orders establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right." *United States* v. *Barnett,* 376 U. S. 681, 692.

See also *People ex rel. Chicago Bar Ass'n* v. *Barasch,* 21 Ill. 2d 407, 410, 173 N. E. 2d 417.

[6, 7] The third and last argument in defendant's brief has already been answered in this opinion insofar as it questions whether defendant's conduct was of a type which an injunction could constitutionally proscribe. Otherwise, defendant does not argue that his conduct was not in violation of Paragraph "(C)" of the injunction (quoted above) in that he did not provide written notice to the Police Department in advance of his march. Nor does he suggest that he did not knowingly and wilfully violate the injunction. The evidence upon which defendant was convicted of contempt was uncontroverted and was sufficient to warrant the judgment of the trial court.

After his conviction defendant asked the chancellor to fix a bond so that he might be at large pending appeal. His request was denied. A substantial period of time then elapsed, during which defendant was in jail, before he made a similar request of this court, which was allowed with bond of $1,000. On oral argument, counsel for defendant urged us to decide—if we were to affirm the finding of

contempt—that the time defendant has already spent in jail is sufficient punishment for the offense. While we believe we would have the authority to reduce the sentence as requested (*People* v. *Hodge,* 23 Ill. 2d 425, 178 N. E. 2d 354), we shall not exercise it here.

Despite the almost incredible advances today in communication facilities, the facility to communicate appears to have declined. Perhaps it has always been true, but surely our society has never suffered more acutely from the use of the same word or term by different persons with different meaning intended. An outstanding example is the wide range of thought which has sought expression in the political term, "liberal," to the point of rendering it meaningless for all practical purposes. And so it is with the concept, "civil disobedience." In the halls of learning, this term may be used in philosophical discussion of the theories advocated by Thoreau, and with quite similar meaning, it may also be applied to the guiding principles of Gandhi. Their non-materialistic revolutionary doctrines of passive resistance, however, contained no preachment that laws and courts could be defied with impunity. But today their same words—"civil disobedience"—are often employed in public forum in a context that seems to contemplate the breaking of "unjust laws" without penalty. Thus, after urging disrespect for law and the courts in the name of "civil disobedience," it is then customary to seek the protection of that same judicial arm of government against serious retribution or punishment.

Whatever "civil disobedience" may mean when used on the air or in press reports of interviews or speeches, when the words have made their way to the level of the streets and are put into action, they are apt to be understood as meaning "disorderly conduct," "resisting arrest," and the like. In the case before us, "civil disobedi-

ence'' translated into legal terminology comes out, ''criminal contempt of court,'' and should be punished accordingly.

[8] The essence of defendant's contempt is his wilful disrespect for the authority of the court's injunction. The nature of this review is such that we have no way of knowing, nor can we ascertain, whether defendant's attitude toward the court remains as contumacious as it was when the decree was entered. If it has changed full circle—from one of disobedience to one of obedience—and if he is able to demonstrate such change to the satisfaction of the chancellor who entered the contempt order, that court would be the proper forum in which defendant should make application for reduction of sentence under these circumstances.

The judgment of the Circuit Court is affirmed.

AFFIRMED.

DRUCKER and MCCORMICK, *JJ.*, concur.

APPENDIX B.

STATE OF ILLINOIS

OFFICE OF
CLERK OF THE SUPREME COURT
Springfield
62706

Telephone
Area Code 217
525-2035

Mrs. Earle Benjamin Searcy
Clerk

September 23, 1968

Messrs. Cotton, Watt,
Jones & King
Attorneys at Law
105 West Adams Street
Chicago, Illinois 60603

Gentlemen:

In Supreme Court today, in Case No. 41019 entitled:

City of Chicago, a municipal corporation;
et al., etc., respondents,

vs.

Rev. Dr. Martin Luther King, et al.,
# # # #
Frank Ditto, petitioner

Petition for Leave to Appeal was: DENIED.

Very truly yours,

/s/ Clell L. Woods,
Clerk of the Supreme Court.